IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 30378 of 2006(N)

PETITIONER:

N.K. CHANDRASEKHARAN,
16/155, ROSE VILLA, KANNAL VAYAL NIALAPARAMBA,
NADAKKUTHAZHE AMSOM, PUTHUPPANAM DESOM,
PALOLIPPALAM, VATAKARA TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

1.THE MUNICIPALITY OF VATAKARA,
REPRSENTED BY ITS SECRETARY,
KOZHIKODE DISTRICT.

2.THE CHAIRMAN, VATAKARA MUNICIPAL
COUNCIL, MUNICIPAL OFFICE, VATAKARA.

3.PALAYATTAYIL THAZHE KUNIYIL BALAN,
SIVADHAM, GOVERNMENT AYURVEDA HOSPITAL ROAD,
PUDUPPANAM, VATAKARA-673 105,
PUDUPPANAM AMSOM DESOM.

R1-R2 BY ADV. SRI.R.SATISH KUMAR
SRI.R.PARTHASARATHY
SRI.A.RADHAKRISHNAN NAIR
R3 BY ADV.SRI.B.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.30378 of 2006

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Dated: 14th February, 2007

JUDGMENT

Even though it was very elaborate submissions which were addressed before me by Mr.C.P.Mohammed Nias, learned counsel for the petitioner who drew my attention to the pleadings of the petitioner, the various documents placed on record and the statutory provisions such as Sections 412, 432, 509(7), 416 of the Kerala Municipality Act and Section 144 of the Public Health Act, I am of the view that this court will not be justified in this case in giving relief to the petitioner since Ext.R3(f) appeal is pending before the Municipal Council. Even though the very maintainability of that appeal was seriously challenged by the counsel for the petitioner, I am inclined to agree with the submission of Mr.B.Krishnan, counsel for the third respondent that the appeal in so far as it is directed against an order passed by the Secretary in exercise of his powers other than those under Sections 390, 391, 406 and 408 under the Kerala Municipality Act is maintainable. Section 509(7) only says that if the Secretary has passed the order on the basis of a decision already passed by the Council, then the appeal will lie only before the Tribunal. But there is nothing on Ext.P3 to indicate that it is on the basis of any decision of the Council that the Secretary has passed Ext.P3 order. Counsel for

the Municipality also would submit that Ext.P3 was passed by the Secretary in exercise of his statutory powers and not on the basis of any decision or order passed by the Council. This being the position, I am of the view that the Council of the Vatakara Municipality shall take an early decision considering the nature of the grievance which is voiced with all seriousness by the learned counsel. Accordingly, this Writ Petition will stand disposed of with the following directions:

The Council of the Vatakara Municipality will take up Ext.R3(f) appeal, consider the same in the light of the materials placed on record including Ext.R3(i) report, hear the petitioner and also the third respondent and take an early decision at the earliest and at any rate within one month of receiving a copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**